IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMPM No.356 of 2007

Decided on: June 11, 2007

State of H.P. **.....Petitioner.**

VERSUS

Madan Kumar and another **.....Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Petitioner : **Mr. Ashok Chaudhary, Additional Advocate General.**

For the respondents : **Nemo.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents Madan Kumar and Kuldeep Kumar were sent up for trial for offences punishable under Sections 279 and 506 IPC. Allegations, as per record, were that Madan Kumar while driving Bus No.HP-30-1872 at Bus Stand Shimla in a rash or negligent manner caused an accident involving vehicle No.DL-4CJ-4679, which was being driven by PW-9 G.S. Bali. Soon after the striking of the bus with the aforesaid car, respondent Kuldeep Kumar, who is the President of the Transport Union, reached there and started intimidating Shri G.S. Bali. Report was lodged with the Police by PW-9 G.S. Bali. The matter was investigated. Both the respondents were sent up for trial. The trial Magistrate (Chief Judicial Magistrate, Shimla) has acquitted both the respondents holding that the truth has been suppressed by the prosecution witnesses, particularly by PW-9 G.S. Bali.

3. I see no reason to disagree with the finding of the trial Court. PW-9 G.S. Bali in the FIR Ex. PW-9/A got recorded that he himself was

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Whether the reporters of the local papers may be allowed to see the judgment?

driving his car, bearing registration No.DL-4CJ-4679, when the alleged accident took place. However, while in witness-box, he stated that the car was being driven by his driver named Jarnail Singh. Though he was not confronted with the FIR lodged by him in which he stated that he himself was driving the car, another witness examined by the prosecution namely PW-1 Parkash Thakur, who claimed to be one of the occupants of the car, very categorically stated that Shri G.S. Bali himself was in driver's seat (of the car) when the accident took place. Defence plea is that the car was overtaking the bus, in question, and that its rear portion might have come into contact with the bus. In view of this defence plea, the statement of PW-9 G.S. Bali denying that he was driving the car becomes significant and relevant.

4. The abovestated position apart, none of the prosecution witnesses has testified as to the exact manner in which the accident had taken place. As a matter of fact, their statements are in the form of finding and do not spell out the facts enabling the Court to record its own finding. They have testified that the bus was being driven in a rash or negligent manner. This is a finding and not statement of facts. The finding is to be recorded by the Court, based on the facts testified by the witnesses. None of the witnesses examined by the prosecution stated the facts. They simply stated the finding, as aforesaid. Hence, this may be said to be a case of no evidence.

5. As regards the alleged intimidation by respondent Kuleep Kumar, none of the witnesses has identified him. Not only this, one for the witnesses, namely PW-1 Parkash Thakur, has very categorically stated that nobody had intimidated PW-9 G.S. Bali or any other person.

6. In view of the abovestated position, the petition for leave to appeal is dismissed.

June 11, 2007(sd) **(Surjit Singh), J.**